

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Berkley Regional Insurance Company, d/b/a
Berkley Technology Underwriters,
as subrogee of Schnoeckers, Inc. d/b/a BI
Worldwide.,

Civ. No. 20-2382 (WMW/DJF)

Plaintiffs,

ORDER

v.

John Doe Battery Manufacturer, Shenzhenshi
Yishengda Dianzi Youxian Gongs, d/b/a Yishda,
Amazon.com, Inc., and Shenzhen Maxpower
Technology Co., Ltd.,

Defendants.

This matter is before the Court on Plaintiff Berkley Regional Ins. Co.’s (“Berkley”) and Defendant Amazon.com, Inc.’s (“Amazon”) (together “Parties”) Joint Motion to Modify the Second Amended Pretrial Scheduling Order (“Motion”) (ECF No. 100).¹ The Court issued the Second Amended Pretrial Scheduling Order on March 16, 2022 (ECF No. 55). The Parties seek to modify certain deadlines related to expert discovery in light of Amazon’s Motion for Summary Judgment (ECF No. 70) and Berkley’s Motion to Certify a Question to the Minnesota Supreme Court (ECF No. 76) (together, “Pending Motions”), which the Court has taken under advisement. (ECF No. 100 ¶ 1.)

Expert discovery is still ongoing. (*Id.* ¶ 2.) The Second Amended Pretrial Scheduling Order includes the following deadlines related to expert discovery:

¹ Service has not been completed on the other Defendants. (ECF No. 100 ¶ 10.)

- a. Plaintiff discloses the identity of expert witnesses under Fed. R. Civ. P. 26(a)(2)(A) on or before November 11, 2022;
- b. Plaintiff fully discloses expert witnesses under Fed. R. Civ. P. 26(a)(2)(B) on or before December 2, 2022;
- c. Defendant discloses the identity of expert witnesses under Fed. R. Civ. P. 26(a)(2)(A) on or before January 6, 2023;
- d. Defendant fully discloses expert witnesses under Fed. R. Civ. P. 26(a)(2)(B) on or before January 27, 2023;
- e. Plaintiff discloses rebuttal witnesses and reports on or before February 10, 2023;
- f. Defendant discloses rebuttal witnesses and reports on or before March 17, 2023;
- g. Expert discovery, including depositions, shall be completed on or before May 5, 2023; and
- h. Non-dispositive motions related to expert discovery to be filed and served by May 5, 2023.

The Parties agree that if the Court grants Amazon's Motion for Summary Judgment, there will be no need for expert discovery. (ECF No. 100 ¶ 5.) They further submit that expert discovery need not begin until after the Court rules on Berkley's Motion to Certify a Question to the Minnesota Supreme Court. (*Id.* ¶ 6.) To avoid the costs of expert discovery, the Parties seek to modify the Second Amended Scheduling Order by: (a) striking the above-stated deadlines related to expert discovery; and (b) setting a deadline of fourteen (14) days after the Court rules on the Pending Motions for the Parties to propose alternate dates related to expert discovery. (*Id.* ¶ 7.)

While the Court recognizes the Parties' desire to litigate this case efficiently, the Court also notes that this case is nearly two years old. The Parties' request, if granted, would delay the case indefinitely and could result in a resolution of this matter well beyond three years after the date it was first filed. Given the length of time since this case was first filed and the Court's duty to promote the progression of cases without undue delay, the Court declines to grant the Parties' request for an indefinite extension of the expert discovery deadlines. Instead, the Court will extend each deadline by thirty (30) days to allow the Parties sufficient time to identify and retain potentially necessary experts.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff Berkley Regional Ins. Co.'s and Defendant Amazon.com, Inc.'s Joint Motion to Modify the Second Amended Pretrial Scheduling Order (ECF No. [100]) is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The following deadlines in the Second Amended Pretrial Scheduling Order are amended as follows:
 - a. Plaintiff discloses the identity of expert witnesses under Fed. R. Civ. P. 26(a)(2)(A) on or before **December 12, 2022**;
 - b. Plaintiff fully discloses expert witnesses under Fed. R. Civ. P. 26(a)(2)(B) on or before **January 3, 2023**;
 - c. Defendant discloses the identity of expert witnesses under Fed. R. Civ. P. 26(a)(2)(A) on or before **February 7, 2023**;
 - d. Defendant fully discloses expert witnesses under Fed. R. Civ. P. 26(a)(2)(B) on or before **February 27, 2023**;
 - e. Plaintiff discloses rebuttal witnesses and reports on or before **March 13, 2023**;
 - f. Defendant discloses rebuttal witnesses and reports on or before **April 17, 2023**;
 - g. Expert discovery, including depositions, shall be completed on or before **June 5, 2023**; and
 - h. Non-dispositive motions related to expert discovery to be filed and served by **June 5, 2023**.

2. All other dates in the Second Amended Pretrial Scheduling Order (ECF No. [55]) remain in full force and effect.

Dated: November 3, 2022

s/ Dulce J. Foster

DULCE J. FOSTER

United States Magistrate Judge